

**(2014) 05 JH CK 0036**

**Jharkhand High Court**

**Case No:** Miscellaneous Appeal No. 283 of 2009

Branch Manager

APPELLANT

Vs

Akel

RESPONDENT

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**Date of Decision:** May 6, 2014

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140
- Penal Code, 1860 (IPC) - Section 279, 304A

**Citation:** (2014) 3 LJLR 184

**Hon'ble Judges:** Dhruv Narayan Upadhyay, J

**Bench:** Single Bench

**Advocate:** Alok Lal, Advocate for the Appellant; T.K. Mishra, Advocate for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Dhruv Narayan Upadhyay, J.

This appeal has been preferred against the judgment and award dated 20th July, 2009 passed by learned District Judge-cum-Motor Vehicle Accident Claim Tribunal, Pakur in connection with M.A.C.T. Case No. 30 of 2008 whereby the appellant has been directed to pay compensation of Rs. 2,25,000/- with interest at the rate of 6% per annum from the date of filing of the claim application, after deducting the amount, if paid, under Section 140 of the M.V. Act to the claimants. The facts, in brief, is that on 14.9.2007 at about 4.30 p.m. Jyotin Marandi, a boy aged about 4-5 years, while crossing the road, was crushed under the wheel of dumper bearing registration No. JH-10K-2837. In this connection Maheshpur P.S. Case No. 143 of 2007 dated 15.9.2007 was registered under Sections 279 and 304-A of the I.P.C. The claimant/respondent Nos. 1 and 2, who are mother and father of the deceased boy, filed petition for grant of compensation which was registered as M.A.C.T. Case No. 30 of 2008. Since the offending vehicle was insured with the appellant, direction was given to them to satisfy the awarded amount, as indicated above and hence this

appeal.

2. It is contended that the learned Tribunal has wrongly assessed the income of a boy aged about 5 years whereas admitted situation is that the boy was not employed anywhere nor he was earning money. The Tribunal has erred in considering notional income of the deceased who was aged about 4-5 years at the time of his death. Learned counsel has referred a judgment reported in 2007 (4) T.A.C. 385 (S.C.), *Oriental Insurance Co. Ltd. vs. Syed Ibrahim and Others*.

3. I have gone through the impugned judgment and award and also the judgment referred to above. In the case of *Oriental Insurance Co. Ltd. vs. Syed Ibrahim* (supra) in para-6 their Lordships have held as under:--

"6. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where, the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents."

It is also held in the said judgment that future prospect of the deceased boy " is to be considered.

4. The learned Tribunal has wrongly observed and considered notional income Rs. 15,000/- of the deceased boy which should not have been considered in that way but considering future prospect i.e. after becoming major when the boy would have been employed or engaged in any business or labour, his earning would not have been less than Rs. 15,000/- which is notional income. Only the expression made by the Tribunal in the impugned judgment has not been properly constructed in proper sentence but the view is clear. Certainly, death of a child cannot be judged in terms of money but to pacify the unfortunate parents some beneficial legislation has been enacted to console them.

5. In the circumstances, I do not find any merit in this appeal and the same stands dismissed. The appellant/insurance company is directed to pay the awarded amount with interest up to date within 90 days from the date of this judgment. Liberty is given to the counsel appearing for the appellant to withdraw the statutory amount of Rs. 25,000/-, deposited at the time of presentation of this appeal subject to payment of awarded amount with interest up to date and on production of receipt.